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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/699,704	10/30/2000	Heribert Weber	10191/1616	7028
26646	7590	01/14/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			MARTIR, LILYBETT	
			ART UNIT	PAPER NUMBER
			2855	

DATE MAILED: 01/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/699,704

Applicant(s)

WEBER ET AL.

Examiner

Lilybett Martir

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-15 and 19-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Drawings*

1. New corrected drawings are required in this application including the changes shown in the proposed drawing corrections submitted on August 14, 2002. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,3-5 and 7-13 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinard et al. (Pat. 5,393,351) in view of Teutler et al. (Pat. 5,703,287) (Pat. 5,965,811). Kinard et al. teaches the claimed invention, including:

- With respect to claim 1, Kinard teaches a frame as in element 202 formed by silicon; a membrane held by the frame as in elements 260 and above in Figure 3; a metal layer as in element 208 including a first structure and a second structure and being arranged above the frame; a heating element as are elements 206, 506 or 706 formed by a first structure in metal; at least one temperature measurement element as are

elements 208, 210, 508, 510, 708 or 710 formed by a second structure in the layer; and a moisture barrier as in element 268 arranged above the metal layer (Col. 11, lines 15-17). Kinard fails to disclose the incorporation of a moisture barrier arranged above the metal layer comprised by Silicon Nitride, and both the heater and the temperature sensing elements being arranged in a metallic layer. Teutler et al. teaches the utilization of a passivation layer 8 made of Silicon Nitride (Col. 2, lines 44-45), and both his heater 3 and the temperature sensing elements 4 being arranged in a single metallic layer (Col.1, lines 41-48 and Col. 2, lines 12-18 and 41-44). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the thermal detector of Kinard utilizing the teachings of the sensing elements of Teutler et al. by providing it with a protective layer arranged over their metallic elements to insulate and protect the metallic detectors and emitters from hazardous environmental conditions therefore making said detector more reliable and durable, and by arranging both the heater and the temperature sensing elements being in a metallic layer to further increase the reliability and accuracy of said meters by protecting it from damage.

- With respect to claim 3, Kinard et al. teaches the use of silicon nitride layers as in elements 262 and 270. But he fails to mention the utilization of his nitride layer as a moisture barrier. Teutler et al. teaches the

utilization of a passivating layer 8 arranged above metallic elements 9 made of Silicon Nitride (Col. 2, lines 44-44).. Since it has been held that rearranging parts of an invention involves only routine skill in the art. (In re Japikse, 86 USPQ70); it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the thermal detector of Kinard utilizing the teachings of the sensing devices of either Kawai et al. or Cook Jr. by providing it with a protective layer arranged over their metallic elements to insulate and protect the metallic detectors and emitters from environmental conditions therefore making said detector more reliable and durable.

- With respect to claim 4, Kinard teaches a moisture barrier forming a top layer of the mass flow sensor as noted in the position of element 268 in Figure 3.
- With respect to claim 5, Kinard et al. teaches a moisture barrier as in element 268 formed at least in part by at least one of a top sandwich system and a bottom sandwich system (note in Figure 1 that the elements that are positioned above element 260 are sandwiched since they are inserted between other elements), a top sandwich system including at least one first silicon oxide layer as in element 264 and at least one first silicon nitride layer as in element 262; and a bottom sandwich system arranged beneath the metal layer and including at least

one second silicon oxide layer as in element 260 and at least one second nitride layer as in element 270.

- With respect to claim 7, Kinard et al. teaches a silicon oxide layer arranged beneath the metal layer as in element 264 in Figure 3.
- With respect to claim 8, Kinard et al teaches the utilization of a nitride layer as in element 262 in Figure 3.
- With respect to claim 9, Kinard et al teaches a silicon oxide layer 260 formed by a thermal oxidation (Col. 6, lines 50-53) arranged between nitride layers as in elements 262 and 270.
- With respect to claim 10, Kinard et al teaches a nitride layer including a silicon nitride layer as in element 262 (Col. 10, lines 67-68).
- With respect to claim 11, Kinard et al teaches an oxide layer as in element 260 arranged in a recess area beneath the nitride layer.
- With respect to claim 13, Kinard et al. teaches a nitride layer formed by one of a PECVD operation, a LPCVD operation, or a CVD operation (Col. 5, lines 10-18).
- With respect to claim 19, Kinard teaches a frame as in element 202 formed by silicon; a membrane held by the frame as in elements 260 and above in Figure 3; a metal layer as in element 208 including a first structure and a second structure and being arranged above the frame; a heating element as are elements 206, 506 or 706 formed by a first structure in the metal layer; at least one temperature measurement

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element as are elements 208, 210, 508, 510, 708 or 710 formed by a second structure in the layer, a moisture barrier as in element 268 formed at least in part by at least one of a top sandwich system and a bottom sandwich system (note in Figure 1 that the elements that are positioned above element 260 are sandwiched since they are inserted between other elements), a top sandwich system including at least one first silicon oxide layer as in element 264 and at least one first silicon nitride layer as in element 262; and a bottom sandwich system arranged beneath the metal layer and including at least one second silicon oxide layer as in element 260 and at least one second nitride layer as in element 270 Kinard fails to disclose the incorporation of a moisture barrier arranged above the metal layer comprised by Silicon Nitride, and both the heater and the temperature sensing elements being arranged in a metallic layer. Teutler et al. teaches the utilization of a passivation layer 8 made of Silicon Nitride (Col. 2, lines 44-45), and both his heater 3 and the temperature sensing elements 4 being arranged in a single metallic layer (Col. 1, lines 41-48 and Col. 2, lines 12-18 and 41-44). Since it has been held that rearranging parts of an invention involves only routine skill in the art. (In re Japikse, 86 USPQ70); it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the thermal detector of Kinard utilizing the teachings of the sensing meter of Teutler et al. by providing it with a

protective layer arranged over their metallic elements to insulate and protect the metallic detectors and emitters from environmental conditions therefore making said detector more reliable and durable, and by arranging both the heater and the temperature sensing elements being in a metallic layer to further increase the reliability and accuracy of said meters by protecting it from damage.

- With respect to claim 20, Kinard et al. teaches a silicone oxide layer 260, a silicon nitride layer 262 on top of the silicone oxide layer, and another silicon oxide layer 264 on top of said silicon nitride layer. Kinard fails to teach the utilization of two additional layers made of silicone nitride and silicon oxide being further arranged in that order over the already disclosed layers. Since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art (St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.); it would have been obvious to one having ordinary skill in the art at the time the invention was made to duplicate the existing layers in the device of Kinard et al. to therefore make it stronger, durable, and capable of withstanding more severe environmental conditions
- With respect to claim 21, Kinard et al. teaches the utilization of a bottom layer 270 which is removed in a recess area of the sensing device. Kawai et al. teaches the same thing in the arrangement of his protecting film 17. Kinard et al. fails to teach the specific utilization of a silicone



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oxide layer in said location, but he does teach the utilization of said material in a plurality of layers of said sensor. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the sensing arrangement of either Kinard et al. by utilizing and rearranging a well known material as is silicone oxide in the bottom layer of said arrangement to make said device durable and reliable.

- With respect to claim 22, Kinard et al. teaches a nitride layer formed by one of a PECVD operation, a LPCVD operation, or a CVD operation (Col. 5, lines 10-18).

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kinard et al. (Pat. 5,393,351) in view of Treutler et al. as applied above to claims 1 and 8-9 and further in view of Kawai et al. (Pat. 5,965,811).

- With respect to claim 12, Kinard et al teaches a recess as in element 226, the utilization of oxide layers as in element 260 and nitride layers as in elements 270 and 262. Kinard et al. fails to teach a recess that does not contain an oxide layer. Kawai et al. teaches a sensing arrangement where the lowermost layer 2 in his recess 15 is made of Silicone Nitride. Since it has been held that the omission of an element and its function in a combination where the remaining elements perform the same function as before involves only routine skill in the art (In re Karlson, 136 USPQ 184), it would have been obvious at the time the invention was made to a

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person having ordinary skill in the art to modify the thermal detector of Kinard utilizing the teachings of the sensing arrangement of Kawai et al. by rearranging or omitting the presence of a layer in said recess therefore exposing the nitride layer in order utilize the nitride layer as a moisture barrier to further protect the detector from environmental hazards that may cause malfunction.

5. Claims 6 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinard et al. (Pat. 5,393,351) in view of Teutler et al. as applied to claims 5 and 19 above and further in view of Sato et al. (Pat. 5,852,239).

- With respect to claims 6 and 23, Kinard et al. as modified above fails to teach at least one of the top sandwich system and the bottom sandwich system including at least one silicone carbide layer. Sato et al. teaches a flow sensor having a thin film of silicon carbide deposited over the surface of a substrate (Col. 4, lines 16-18) and therefore that the utilization of said material is well known in the art of flow sensors. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the thermal detector of Kinard utilizing the teachings of the sensing arrangement of Sato et al. by providing it with a layer of silicone carbide inside the membrane structure of the sensor for the purpose of utilizing a preferred well-known heat refractory material that would allow accurate flow measurements.

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**Response to Arguments**

6. Applicants arguments have been fully addressed by the above presented office action.

**Conclusion**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lilybett Martir whose telephone number is (703)305-6900. The examiner can normally be reached on 9:00 AM to 5:30 PM.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (703)305-4816. The fax phone number for the organization where this application or proceeding is assigned is (703)305-3432.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

CM

Lilybett Martir  
Examiner  
Art Unit 2855

RCM

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